

Chapter 46-04-01  
Human Rights

Section

46-04-01-01 Definitions

46-04-01-02 Complaint

46-04-01-03 Respondent Answer

46-04-01-04 Conciliation

46-04-01-05 Investigation and Disposition

46-04-01-06 Appeal of Dismissal

46-04-01-07 Disability Standards for Public Accommodations

46-04-01-08 Disability Standards for Public Services

**46-04-01-01. Definitions.**

As used in the Human Rights Act (North Dakota Century Code chapter 14-02.4) and these rules:

1. "Aggrieved person" means any person who claims to have been injured by a discriminatory practice.
2. "Complainant" means a person, including the department, who files a complaint under North Dakota Century Code section 14-02.4-19.
3. "Complaint" means a written statement alleging a discriminatory practice.
4. "Conciliation" means the informal negotiations among an aggrieved person, the respondent, and the department to resolve the issues raised by a complaint or by the investigation of the complaint.
5. "Conciliation agreement" means a written agreement resolving the issues in conciliation.
6. "Disability" means a physical or mental impairment that substantially limits one or more major life activities, a record of this impairment, or being regarded as having this impairment. The term does not include current illegal use or addiction to any drug or illegal or federally controlled substance.
7. "Discriminatory practice" means an act prohibited by North Dakota Century Code sections 14-02.4-03 through 14-02.4-06 and 14-02.4-14 through 14-02.4-18. The term also includes sexual harassment.
8. "Respondent" means a person accused of a discriminatory practice.
9. "Sexual Harassment" means unwelcome sexual advances, requests for sexual favors, sexually motivated physical conduct, or other verbal or physical conduct or communication of a sexual nature when:
  - a. Submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining employment, public accommodations, public services, or credit transactions;

- b. Submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's employment, public accommodations, public services, or credit transactions; or
- c. That conduct or communication has the purpose or effect of substantially interfering with an individual's employment, public accommodations, public services, or credit transactions. In the case of employment, the employer is responsible for its actions and those of its supervisory employees if it knows or should know of the existence of the harassment and fails to take timely and appropriate action.

**General Authority:** NDCC 14-02.4-22

**Law Implemented:** NDCC 14-02.4

#### **46-04-01-02. Complaint.**

1. An aggrieved person may file a complaint with the department alleging a discriminatory practice. The department may file a complaint.
2. An aggrieved person may initiate a complaint with the department in person, by telephone, or in writing utilizing an intake questionnaire provided by the department.
3. Upon receipt of initial information from an aggrieved person, the department will assess the jurisdiction and timeliness of the allegations. If the department determines that the allegations are not timely or do not allege a violation of North Dakota Century Code chapter 14-02.4, the department may not file the complaint or may request additional information from the aggrieved person.
4. If the department determines that the allegations are timely and allege a violation of North Dakota Century Code chapter 14-02.4, the department shall prepare a complaint for signature by the complainant. A complaint prepared by the department will include:
  - a. The name and address of the complainant and his or her agent, if any;
  - b. The name and address of the respondent;
  - c. The alleged discrimination and a statement of the particulars thereof; and
  - d. The date or dates of the alleged discrimination.
5. A complaint is filed with the department when the original, signed complaint is received by the department. A complaint filed by the department is filed when it is signed by the Commissioner of Labor.
6. A complaint may be amended at any time.
7. A complaint may be filed in state court without first being filed with the department.

**General Authority:** NDCC 14-02.4-22

**Law Implemented:** NDCC 14-02.4-19, 14-02.4-23

#### **46-04-01-03. Respondent Answer.**

Within five working days of filing a complaint alleging a discriminatory practice, the department will provide a copy of the complaint to the respondent. The respondent may file a written answer to the complaint within ten days of the date the respondent receives notice of the complaint. The department may grant an extension to file an answer upon written request by the respondent.

**General Authority:** NDCC 14-02.4-22

**Law Implemented:** NDCC 14-02.4-19, 14-02.4-23

#### **46-04-01-04. Conciliation.**

The department shall, during the period beginning with the filing of a complaint and ending with the dismissal of the complaint or the issuing of a finding of reasonable cause by the department, to the extent feasible, engage in conciliation with respect to the complaint. A conciliation agreement between a respondent and the complainant is subject to departmental approval. A conciliation agreement may provide for binding arbitration or another method of dispute resolution. A conciliation agreement may authorize appropriate relief, including monetary relief.

**General Authority:** NDCC 14-02.4-22

**Law Implemented:** NDCC 14-02.4-22, 14-02.4-23

#### **46-04-01-05. Investigation and Disposition.**

1. The department shall investigate complaints alleging discriminatory practices.
2. Upon completing its investigation of a complaint, the department shall determine from the facts whether reasonable cause exists to believe that a discriminatory practice has occurred.
3. In determining whether reasonable cause exists to believe that a discriminatory practice has occurred, the department shall consider whether the facts concerning the alleged discriminatory practice are sufficient to warrant the initiation of a civil action in court.
4. The department may close a complaint prior to the completion of its investigation if:
  - a. The complaint is resolved through conciliation;
  - b. The complaint is withdrawn by the complainant;
  - c. The complainant fails to cooperate with the department during the investigation;

- d. The department is unable to locate the complainant;
- e. It is determined that the department lacks jurisdiction to investigate the allegation(s) contained in the complaint; or
- f. The complaint is deferred to a federal agency for investigation under the terms of a work-sharing agreement between the department and the federal agency.

**General Authority:** NDCC 14-02.4-22

**Law Implemented:** NDCC 14-02.4-23

#### **46-04-01-06. Appeal of Dismissal.**

When the department dismisses a complaint because it has determined that there is not reasonable cause to believe that a discriminatory practice has occurred, the complainant may request a review of the determination by the Commissioner of Labor. A request for review must be made in writing within ten days of the date the complainant receives notice that the complaint has been dismissed. Upon receipt of a request for review, the Commissioner shall promptly review the investigative findings upon which the determination was based and issue a decision as to whether he or she agrees with the determination or believes that further investigation of the complaint may be appropriate.

**General Authority:** NDCC 14-02.4-22

**Law Implemented:** NDCC 14-02.4-23

#### **46-04-01-07. Disability Standards for Public Accommodations.**

In its investigation and disposition of complaints alleging discriminatory practices in public accommodations based on the complainant's disability, the department will rely on judicial and administrative interpretations for Title III of the Americans with Disabilities Act of 1988.

**General Authority:** NDCC 14-02.4-22

**Law Implemented:** NDCC 14-02.4-14

#### **46-04-01-08. Disability Standards for Public Services.**

In its investigation and disposition of complaints alleging discriminatory practices in public services based on the complainant's disability, the department will rely on judicial and administrative interpretations for Title II of the Americans with Disabilities Act of 1988.

**General Authority:** NDCC 14-02.4-22

**Law Implemented:** NDCC 14-02.4-15

Chapter 46-05-01  
Housing Discrimination

Section

46-05-01-01 Definitions

46-05-01-02 Complaint

46-05-01-03 Investigation and Disposition

46-05-01-04 Appeals

46-05-01-05 Intervention by Attorney General

46-05-01-06 Intimidation or Interference

**46-05-01-01. Definitions.**

The definitions in North Dakota Century Code section 14-02.4-02 and North Dakota Administrative Code section 46-04-01-01 may be used to supplement the definitions in North Dakota Century Code section 14-02.5-01 and those here. As used in the Housing Discrimination Act (North Dakota Century Code chapter 14-02.5) and these rules:

1. "Department" means the division of human rights within the department of labor.
2. "Minor" means any person under eighteen years of age.

**General Authority:** NDCC 14-02.5-13

**Law Implemented:** NDCC 14-02.5-01

**46-05-01-02. Complaint.**

1. An aggrieved person may file a complaint with the department alleging a discriminatory housing practice. The department may file a complaint.
2. An aggrieved person may initiate a complaint with the department in person, via telephone, or in writing utilizing an intake questionnaire provided by the department.
3. Upon receipt of initial information from an aggrieved person, the department will assess jurisdiction and timeliness of the allegations. If the department determines that the allegations are not timely or do not allege a violation of North Dakota Century Code chapter 14-02.5, the department may not file the complaint or may request additional information from the aggrieved person.
4. If the department determines that the allegations are timely and allege a violation of North Dakota Century Code chapter 14-02.5, the department shall prepare a complaint for signature by the complainant. A complaint prepared by the department will include:
  - a. The name and address of the complainant and his or her agent, if any;
  - b. The name and address of each respondent;
  - c. The alleged discrimination and a statement of the particulars thereof; and

- d. The date or dates of the alleged discrimination.
5. A complaint is filed with the department when the original, signed complaint is received by the department. A complaint filed by the department is filed when it is signed by the Commissioner of Labor.

**General Authority:** NDCC 14-02.5-13

**Law Implemented:** NDCC 14-02.5-18, 14-02.5-39

#### **46-05-01-03. Investigation and Disposition.**

1. The department shall investigate complaints alleging discriminatory housing practices.
2. Upon completion of its investigation of a complaint, the department shall determine from the facts whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur.
3. In determining whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the department shall consider whether the facts concerning the alleged discriminatory practice are sufficient to warrant the initiation of a civil action in court.
4. The department may close a complaint prior to the completion of its investigation if:
  - a. The complaint is resolved through conciliation;
  - b. The complaint is withdrawn by the complainant;
  - c. The complainant fails to cooperate with the department during its investigation;
  - d. The department is unable to locate the complainant;
  - e. It is determined that the department lacks jurisdiction to investigate the allegation(s) contained in the complaint; or
  - f. The complaint is deferred to a federal agency for investigation under the terms of a work-sharing agreement between the department and the federal agency.

**General Authority:** NDCC 14-02.5-13

**Law Implemented:** NDCC 14-02.5-20, 14-02.5-25, 14-02.5-26, 14-02.5-30, 14-02.5-31, 14-02.5-36, 14-02.5-39

#### **46-05-01-04. Appeals.**

1. When the department dismisses a complaint because it has determined that there is not reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur, the complainant may request a review of the determination by the Commissioner of Labor. A request for review must be made in writing within ten

days of the date the complaint receives notice that the complaint has been dismissed. Upon receipt of a request for review, the Commissioner shall promptly review the investigative findings upon which the determination was based and issue a decision as to whether he or she agrees with the determination or believes that further investigation of the complaint may be appropriate.

2. Appeals of all administrative hearings conducted pursuant to North Dakota Century Code section 14-02.5-31 will be governed by North Dakota Century Code sections 28-32-15 through 28-32-21.
3. Appeals of all district court judgments in civil actions pursuant to North Dakota Century Code section 14-02.5-36 will follow procedures provided in North Dakota Century Code section 28-27-01.

**General Authority:** NDCC 14-02.5-13

**Law Implemented:** NDCC 14-02.5-31, 14-02.5-32, 14-02.5-36

#### **46-05-01-05. Intervention by Attorney General.**

1. On request of the department, the attorney general may intervene in an action under North Dakota Century Code sections 14-02.5-39 through 14-02.5-44 if the department certifies that the case is of general public importance.
  - a. A civil action under this section may be commenced not later than the expiration of eighteen months after the date of the occurrence or the termination of the alleged discriminatory housing practice, except that a civil action may be commenced not later than the expiration of ninety days after the referral of an alleged breach of a conciliation agreement.
  - b. The attorney general may obtain the same relief as is available to the attorney general under North Dakota Century Code subsection 2 of section 14-02.5-37.

**General Authority:** NDCC 14-02.5-13

**Law Implemented:** NDCC 14-02.5-43

#### **46-05-01-06. Intimidation or Interference.**

1. An offense under North Dakota Century Code section 14-02.5-45 is a Class A misdemeanor, except when the act of intimidation or interference results in bodily injury or death. Acts of intimidation or interference resulting in bodily injury or death are offenses under the appropriate sections of North Dakota Century Code Title 12.1 and are subject to the penalties contained therein.

**General Authority:** NDCC 14-02.5-13

**Law Implemented:** NDCC 14-02.5-45